

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

In re:)	
)	
NADA DIAB)	Case No. 08-11345-SSM
)	Chapter 7
Debtor)	

**MEMORANDUM OPINION AND ORDER
GRANTING MOTION FOR TURNOVER**

A hearing was held on October 7, 2008, on the motion of Richard A. Bartl, chapter 7 trustee, for turnover of two income tax refunds and a bank account balance, on the ground that the debtor's claimed exemption of the refunds and the account under the Virginia homestead exemption had not been perfected by the timely filing of a homestead deed. The debtor was not present when the matter was called, and the court ruled from the bench that the motion would be granted. After the trustee had left, the debtor appeared and addressed the court. The debtor conceded that a homestead deed had not been timely recorded in the circuit court of the county in which she resides, but explained that the reason was because she did not have a lawyer and was not aware of the requirement. She also stated that she was willing to make payment arrangements with the trustee.

It is unfortunate that the debtor, because she was not represented by counsel, did not take the required steps to perfect the exemption that would otherwise have been available to her under Virginia law.¹ An individual debtor may exempt from property of the bankruptcy estate — and

¹ The trustee advises that he informed the debtor at the meeting of creditors that a homestead
(continued...)

thus retain, free from the claims of the bankruptcy trustee and most creditors — certain property. § 522(b), Bankruptcy Code. For debtors entitled to claim Virginia exemptions, this includes property that is claimed exempt under the Virginia homestead exemption. Va. Code Ann. § 34-4 et seq. The homestead exemption allows a "householder"—defined as any resident of Virginia—to hold up to \$5,000 of real or personal property exempt from creditor process by filing for record an instrument known as a homestead deed in the clerk's office of the Circuit Court for the city or county where the real property is located or, if personal property is claimed, where the debtor resides. Va. Code Ann. §§ 34-4, 34-6, 34-13, and 34-14. Additional amounts may be claimed exempt if the householder supports dependents or is a disabled veteran. Va. Code Ann. § 34-4 (additional \$500 for each dependent) and § 34-4.1 (additional \$2,000 for disabled veteran). In the case of a debtor who has filed for bankruptcy, the homestead deed must be recorded in the clerk's office appropriate circuit court (not the bankruptcy court) no later than 5 days after the meeting of creditors is held. Va. Code Ann. § 34-17. The law is clear that failure to strictly comply with the statutory requirements for setting apart a homestead exemption results in the loss of that exemption in bankruptcy. *Zimmerman v. Morgan*, 689 F.2d 471, 472 (4th Cir. 1982); *In re Freedlander*, 93 B.R. 446, 448-49 (Bankr. E.D. Va. 1988). For that reason, the court has no choice except to grant the trustee's motion.

It is, accordingly,

ORDERED:

¹(...continued)
deed was required and that she should seek legal counsel to protect her exposed assets.

1. The motion for turnover is granted, and the debtor shall, within 30 days of the entry of this order—unless the trustee agrees to other payment terms, which he may do at his discretion—turn over to the trustee her 2007 federal income tax refund in the amount of \$2,686.00, her 2007 state income refund in the amount of \$1,232, and the \$1,002 balance that was in her bank account on the filing date of her bankruptcy petition.

2. The clerk will mail a copy of this order, or give electronic notice of its entry, to the parties listed below.

Date: _____

Alexandria, Virginia

Stephen S. Mitchell
United States Bankruptcy Judge

Copies to:

Nada Diab
13105 Brittany Dr.
Silver Springs, MD 20904
Debtor *pro se*

Richard A. Bartl, Esquire
Tyler, Bartl, Ramsdell & Counts, PLC
700 S. Washington St., Suite 216
Alexandria, VA 22314
Chapter 7 trustee